IN THE HIGH COURT OF JUDICATURE AT PATNA

1. CWJC No.2441 of 2001
DR.(MRS.) SAROJINI SINHA
Versus
THE STATE OF BIHAR & ORS

With

2. CWJC No.3292 of 2002
PROFESSOR HARGOVIND SINHA
Versus
MAGADH UNIVERSITY & ORS

With

3. CWJC No.7460 of 2002
RAM PRAVESH SINGH
Versus
THE MAGADH UNIVERSITY & ORS

With

4. CWJC No.9709 of 2003
DAROGA CHOUDHARY
Versus
THE MAGADH UNIVERSITY & ANR.

With

5. CWJC No.10615 of 2003
SRI RAMADHAR SINGH
Versus
MAGADH UNIVERSITY & ORS

With

6. CWJC No.11410 of 2003
PROF.RAM NARESH PRASAD SINHA
Versus
THE STATE OF BIHAR & ORS

With

7. CWJC No.11790 of 2003
SHRI NARESH SHARMA
Versus
THE STATE OF BIHAR & ORS

With

8. CWJC No.13196 of 2004
DR.(MRS.)SHEFALI MAHATO
Versus
THE STATE OF BIHAR & ORS

With

9. CWJC No.14716 of 2004
LILA DEVI @ LILA SAHAY
Versus
THE V.C.,MAGADH UNIVERSITY & ORS

With

10. CWJC No.15533 of 2004
MADHUSUDAN PRASAD
Versus
THE V.C.,MAGADH UNIVERSITY & ORS

With

11. CWJC No.16091 of 2004
SUMITRA DEVI
Versus
THE STATE OF BIHAR & ORS

With

12. CWJC No.16333 of 2004
VISHWANATH SINGH
Versus
THE V.C.OF MAGADH UNIVERSITY & ORS.

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13. CWJC No.196 of 2005
MUSAFIR YADAV
Versus
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14. CWJC No.268 of 2005
RAMDEO RAM
Versus
THE MAGADH UNIVERSITY & ORS

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15. CWJC No.444 of 2005
DR.PREM KUMAR KHANDELWAL

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With
16. CWJC No.445 of 2005
ASHA SINHA
Versus
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17. CWJC No.562 of 2005
ASHOK KUMAR
Versus
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With
18. CWJC No.1234 of 2005
DR.(PROF.)NIKHILESH KUMAR
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THE STATE OF BIHAR & ORS
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19. CWJC No.2661 of 2005
DR.RAM PADARATH SAHA
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20. CWJC No.3016 of 2005
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21. CWJC No.3074 of 2005
SMT.MADHURI DEVI
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22. CWJC No.3196 of 2005
UMA PANDEY
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23. CWJC No.3365 of 2005
DR.KALIKA PRASAD THAKUR
Versus
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24. CWJC No.3418 of 2005
KUSHESHWAR PD.SINGH CHOUHAN
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28. CWJC No.3796 of 2005
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29. CWJC No.6399 of 2005
DR.DINANATH SHARAN
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30. CWJC No.45 of 2006

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31. CWJC No.124 of 2006
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32. CWJC No.135 of 2006
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33. CWJC No.154 of 2006
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34. CWJC No.502 of 2006
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35. CWJC No.936 of 2006
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36. CWJC No.1675 of 2006
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37. CWJC No.1833 of 2006
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40. CWJC No.4447 of 2006
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41. CWJC No.5008 of 2006
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50. CWJC No.8225 of 2006
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51. CWJC No.8237 of 2006
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55. CWJC No.10316 of 2006
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57. CWJC No.10921 of 2006
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58. CWJC No.11051 of 2006
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60. CWJC No.11512 of 2006
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66. CWJC No.12294 of 2006
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67. CWJC No.12790 of 2006
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68. WJC No.12989 of 2006
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71. CWJC No.14019 of 2006
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83. CWJC No.1082 of 2007
BINAY KRISHNA SINHA
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84. CWJC No.1332 of 2007
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With
85. CWJC No.1346 of 2007
USHA DEVI
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87. CWJC No.3499 of 2007
MOST.BASANTI SINGH
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88. CWJC No.4106 of 2007
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89. CWJC No.4107 of 2007
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90. CWJC No.4108 of 2007
PROF.RAGHUBAR DAYAL SINGH
Versus
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With
91. CWJC No.4347 of 2007
DR.RAJENDRA PRASAD SINHA
Versus
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92. CWJC No.4977 of 2007
DR.MALIK PRASAD SINHA
Versus
THE V.C.,MAGADH UNIVERSITY & ORS
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93. CWJC No.5003 of 2007
DR.(PROF.)KEDAR PRASAD SINGH
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94. CWJC No.5134 of 2007
SARASWATI DEVI
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95. CWJC No.5272 of 2007
MOSTT.MADHURI VERMA
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96. CWJC No.5822 of 2007
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97. CWJC No.12633 of 2006
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O R D E R

12/ 28.07.2008 Heard learned counsels for the petitioners, learned counsels for the University and learned counsels for the State.

This order is being passed by this Court with consent of the parties.

This batch of cases are all against Magadh University in which retired employees or their beneficiaries claim that monetary entitlements in the form

of retiral benefits or death-cum-retiral benefits on account of their own retirement or on account of death in harness of the concerned teaching/non-teaching employee of the University or some dues with regard to arrears on account of revision of pay-scale still remains due with the University. In none of the cases University has denied the entitlement of its concerned employee, on account of his retirement or death, under most of the items claimed, except raising some dispute in some of the cases with regard to rate of calculation, date of entitlement or expressing its inability to pay the amount, due to paucity of fund and failure on the part of State Government to release sufficient fund to clear its up-to-date liabilities towards its employees retired or died in harness so far.

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There is no dispute at the Bar that, as per law, in all cases, responsibility of initiating the process at least six months prior to his scheduled date of retirement, for payment of retiral benefits and sanction of pension to the retiring employee, lies on the Head of the Institution or the Registrar of the University. It may be useful to reproduce herein, in particular, some relevant provisions from Chapter II of 'PROCEDURAL INSTRUCTIONS REGARDING SANCTION AND PAYMENT OF RETIREMENT BENEFITS ADMISSIBLE UNDER THE STATUTES FOR THE GRANT OF RETIREMENT BENEFITS TO EMPLOYEES OF THE UNIVERSITIES OF BIHAR (EXCEPT PATNA UNIVERSITY)' (with emphasis supplied herewith):

> "7. The Heads of Institutions in the case of non-teaching staff serving in Colleges/Departments/Institutions and the Registrar in all other cases will draw up a list of persons due for superannuation during the next financial year, by the 1st of August each year. These lists will be drawn in three parts-one of those who have opted for G.P.Fund-

cum-Pension-cum-Gratuity Scheme, another for those who have opted for G.P.Fund-cum-Gratuity Scheme and the last of those who have opted only for G.P.Fund Scheme. The list of those persons who have opted for G.P.Fund-cum-Pension-cum-Gratuity Scheme as also of those who have opted for G.P.Fund-cum-Gratuity Scheme, will be sent to the Provident Fund Section, for preparation of the budget estimates for pension and gratuity for the next year. These lists will indicate the length of service of these individuals will have on the date of their retirement and the rate of pay reckonable for pension that they will be drawing during the last ten months of their service. In the case of teaching staff, a copy of the list will be sent by the Registrar to the Heads of Institutions where they are serving.

8. At least six months before the date of retirement on superannuation of an employee, the Head of the Institution and the Registrar in the case of employees in the University office will initiate the proposal for grant of pension and gratuity in the case of persons who have opted for G.P.Fund-cum-Pension-Gratuity Scheme and gratuity only in the case of those who have opted for G.P.Fund-cum-Gratuity Scheme. An application in the form enclosed at Annexure IV will be prepared by the Head of the Institution/Registrar for this purpose. These applications will be accompanied by two slips on quarter sheet of paper bearing specimen signatures of the applicant and his/her wife/husband and two joint photographs of husband-wife, both duly attested by a gazetted officer or an officer of the University or Principal of the college concerned. In the case of *Pardanashin ladies*, joint photographs may not be furnished along with the application. In such cases thumb and finger impressions or specimen signatures in the case of those who are literate and particulars of height and personal marks, shall be required to be furnished in duplicate, on two separate sheets, duly attested by a gazetted officer or an officer of the University or the Principal of the college concerned. The applicant shall also furnish thumb and finger impressions or specimen signatures (if literate) and personal marks of them, spouses, in duplicate on two separate sheets duly attested by a gazetted officer or an officer of the University or Head of the Institutions.

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In addition to the above, the following certificates shall be obtained from the employee and enclosed with the application:

"I hereby declare that I have neither applied for nor received any pension or gratuity in respect of any portion of the

service included in this application and in respect of which pension or gratuity is claimed herein nor shall submit an application hereinafter without quoting a reference to this application and to the orders which may be passed thereon."

9. After completion of the application as above, the Head of the Institution where the employee is serving and the Registrar in the case of employee serving in the University office will forward the applications along with the service record to the Provident Fund Section for processing.

The application for pension and/or gratuity completed as stated above, will be forwarded along with the service record of the employee, to the Provident Fund Section. That Section will check the application with the service record of the employee concerned to verify the length of service in all cases and also the rate of emoluments in the case of non-teaching staff serving in College/Departments/Institutions. If need be, the pay bills for such staff will be obtained for verification from the Colleges/Department/Institutions. The rate of emoluments in other cases will be got verified from the salary paying section. Thereafter the proposed rates of pension and gratuity will be checked and the pension application put up to the Vice-Chancellor, stating specifically the amount of pension/gratuity admissible to the applicant under the rules.

10. On receipt of orders of Vice-Chancellor as above, the Pension and Gratuity Section will ask the applicant to furnish `No demand certificates' from the various Departments concerned if not already received. When these are received, a pension payment order in the form enclosed at Annexure-VI for payment of pension and/or gratuity, as the case may be, issued by the Pension and Gratuity Section authorising payment of pension and/or gratuity as approved by the Vice-Chancellor.

The payment of pension will commence from the first of the second month following the date of the employee's retirement i.e. a person retiring on 31.3. will be paid his first pension for the month of April, on 1.5. The amount of gratuity, will, however, be payable immediately after retirement.

If due to any reason verification of the records of any employee who has retired and has applied for payment of the pension, gratuity etc. due to him, is delayed beyond one month of the date of retirement of the employee, provisional pension will be paid to the employee to the extent of 90% of the expected pension due to be paid to the employee, and this provisional pension shall start being paid

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to the retired employee not later than from the second month of the date of retirement of the employee.

Provided further that if the verification etc. of records is not completed even after one month of the date of retirement of the employee, and the pension of the retired employee is not determined on that account for a period of ten months from the date of retirement of the employee, the provisional pension to the extent of 90% of the expected pension as being paid as above, shall be suitably raised to 100% of the expected pension, and be finally regarded as the pension to which the employees shall be entitled."

11. Provident Fund Section, will forward to the Bank with whom the Pension & Gratuity Fund is maintained the original copy of the Pension Payment Order, an attested copy of the employ's and his/her spouse's specimen signatures, as well as an attested copy of the joint photograph of the employee and his/her wife/husband, as the case may be. In the case of *Pardanasheen ladies* personal marks will be sent, instead of joint photographs. The following seal will be embossed on the original copy of the P.P.O."

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Thus it is apparent that, at no stage of the process of settlement of his claims, any responsibility lies with the retiring employee to take initiative in the matter, except for complying with directions of the concerned authorities of the Institution or the University requiring him to furnish his photograph, to put his signature on relevant papers, to furnish no demand certificates, so on and so forth. It is apparent that, at all point of time, and in all cases, it is the statutory duty of the Head of the Institution or the Registrar, as the case may be, to see that entire claims of the retiring employee, are calculated, settled and paid to him immediately upon his retirement and his pension starts from the next month.

But, the present batch of cases makes it abundantly clear that in case of none of the employees,

retired or died in the employment of the University, the concerned Head of the Institution or the Registrar of the University has performed its statutory duty, resulting into non-payment of many of the lawful and admitted dues of its employees even months and years after his retirement or death, causing immense hardship to the employee in the last stage of his life and to the family dependent upon him, besides causing pecuniary loss to him by way of interest on the amount to which he became entitled on the day of his retirement itself, forcing him to enter into prolonged and expensive litigation.

In the circumstances, this Court is of the view that the concerned Head of the Institutions or the Registrar of the University or any authority of the Institution or the University, who may be found liable for the delay in the matter must be personally made liable to pay penal interest on all the lawful amount due to an employee as well as for payment of cost of, otherwise unnecessary, litigation in this Court.

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However, since the cases are pending in this Court from before the subject matter was assigned to this Bench, and with a view not to take the respondents and officials of the University/Institutions by surprise, this Court is inclined to give a last opportunity to them to perform their statutory duty cast upon them by the Statute by way of adjournment of three months with the following directions to the Head of the Institution concerned and the Registrar of the University:-

(a) Before the next date fixed in this batch of cases, they shall see to it that all admitted and

lawful dues of the concerned employee of the University are calculated, settled and paid to him/her or his/her beneficiaries.

(b) They shall see to it that all calculations are made as per the rates of entitlement, including that of the pay-scale admissible from time to time, of the employee concerned, as laid down in the relevant Act/ Statutes/ Rules/ Regulations/ Notifications etc. as applicable at the relevant time or as made applicable by judicial pronouncement or interpretations made in the matter.

Any miscalculation, resulting into short or excess payment to the employee concerned or his beneficiary shall be treated as non-compliance or wrong compliance of order of this Court and shall be viewed seriously.

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(c) Details of calculation under each head, with mention of relevant provision of law or judicial pronouncement, as the case may be, in the margin of the calculation, along with cheque/draft of the amount found payable (except where it is directly creditable in the account) shall be served on the employee or his/her beneficiary at his/her known place of residence, or shall be sent through insured registered post, if the entire family has shifted its residence out side the State. For this, address of the employee or his/her beneficiary shall be verified beforehand, if required. This exercise must be completed latest by two weeks

prior to the next date fixed in this batch of cases.

(d) In case, any specific claim raised by the petitioners in the respective writ petition is found not payable, a specific order in this regard shall be passed by the Vice Chancellor with reference to the specific provision of law or judicial pronouncement and shall be made available to the employee or his/her beneficiary along with the details of calculation and the cheque/draft as aforesaid.

(e) Latest by one week prior to the date fixed in this batch of cases, the Head of the Institution concerned or the Registrar of the University, as the case may be, shall file a personal affidavit in each and every case, with copy served on the learned counsel for the petitioner, certifying that, to his personal satisfaction, entire lawful dues of the employee has been paid to the employee or his beneficiary and shall also enclose copies of the details of calculation and the cheque/draft as served/sent to the employee or his beneficiary in terms of (c) above, and shall also enclose copy of registration receipt, as the case may be . With the affidavit, a copy of the order of the Vice-Chancellor, if any, denying any specific claim of the petitioner, and served upon the employee or his/her beneficiary in the manner indicated above, shall also be enclosed.

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(f) In case, any lawful amount of the concerned

employee remains due to be paid to him or his beneficiary, and no order denying the claim is served upon the employee or his/her beneficiary in the manner indicated above, the Head of the Institution or the Registrar, as the case may be, shall disclose in his personal affidavit the name and details of the employee or officer due to whose lapses or due to whose fault the amount remained unpaid. In case the name and details of the employee/officer responsible for non-payment of any lawful amount of the employee concerned is not disclosed in such personal affidavit, the Head of the Institution concerned or the Registrar, as the case may be, shall be assumed to be personally responsible for the said lapse or default.

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(g) In case of outstanding arrears of salary on account of revision of pay-scale of teachers of the University w.e.f. 1.1.1996, and in case University finds itself unable to pay the same due to paucity of fund, it shall calculate the amount payable separately to each of the employee concerned of the present batch of cases and send a requisition to the State Govt. separately with all details of revision and fixation of pay-scale, with reference to relevant Act/ Statutes/ Rules/ Regulations/Notifications etc. as applicable at the relevant time or as made applicable or interpreted by judicial pronouncement made in the matter, with all details of the employee in the format prescribed by the State Govt. for the purpose, with

original of the documents required by the State Government or explanation for non-furnishing of the same. The requisition must be received by the concerned authority of the State Government latest three weeks before the next date fixed in this batch of cases, and copies thereof, with copy of receiving must be enclosed with the personal affidavit, as aforesaid.

(h) State Government on receipt of such requisition in respect of individual employee, shall cause it to be examined, and upon being satisfied, shall release the necessary fund to the University specifically earmarked for payment to the concerned employee or his/her beneficiary as the case may be within two weeks from the date of receipt of the said requisition and shall inform the Court on the next date fixed in the batch of cases about the same. On receipt of the said fund, University shall make payment of the amount to the employee concerned or his/her beneficiary immediately with due intimation to the State Government and this Court.

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Any miscalculation, resulting into short or excess release of fund and payment thereof to the employee concerned or his/her beneficiary shall be treated as non-compliance or wrong compliance of order of this Court by the University authorities or the authorities of the State Government, as the case may be, and shall be viewed seriously.

(i) Before filing of the aforesaid affidavits in

respective cases, all concerned shall get satisfied, that specific and unambiguous pleading has been made in the affidavit showing full compliance of the directions of the Court as made above, and all necessary enclosures, as indicted above, are enclosed and all the heads of claims of the employee concerned are independently dealt with in separate paragraphs, so that any requirement of any further affidavit in the case may be ruled out, and the case may be in a position to be disposed of finally on the next date fixed.

Let the batch of cases be listed again on 20th of October, 2008 at 10.30 A.M. for further hearing.

Let a copy of this order be handed over to the learned counsel for the Magadh University as well as learned counsel for the State.

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(J. N. Singh, J.)

A.H.